

Protect Small Business Jobs Act: Q&A

Q: Why six months, extensible to nine, for the grace period, and not more or less?

A: In consultation with former Small Business Administration (SBA) officials, it was felt this would be long enough to allow a business to resolve the issue, and shorter might be too short. Some violations might require action on the part of a vendor, or changing vendors, or otherwise require a process that should not be rushed. Ensuring that the business must apply for an extension and show good-faith effort is being taken to resolve the sanction mitigates the possibility of a business exploiting the grace period.

Q: Why do you have a novel definition of small business, which includes the SBA definition but also allows for any business under a certain number of employees or income to qualify?

A: First, for the sake of inclusion, we wanted the protection under this act to apply generously. It would be unfortunate for a business that just didn't quite fit the SBA definition to be denied this protection, which might be viewed as arbitrary and unfair. There will always be someone just outside the definition, but the further out, the better. Second, for the sake of simplicity. A business owner can simply say "oh, we definitely have fewer than 200 employees" and leave the accountant and attorney out of it. It also makes it easier for a company to prove to the federal agency that they fit the definition by simply showing them an annual return of withholding income tax or a cash flow statement.

Q: Isn't it unfair to not provide large businesses with this same protection?

A: Large businesses become large only after already being small, so in the long run, all businesses will enjoy the same protection before reaching that stage. Large businesses are better equipped to manage regulations, they have years of experience and know regulations better than small businesses; in many cases they are the beneficiary of regulations acting as barriers to entry. They benefit from the reduced uncertainty about the small businesses they use for contracting.

Q: Would this bill allow companies to dump toxic waste during the grace period?

A: No. First, dumping is a property crime and the bill provides no coverage for property crimes and damages. Second, the bill provides no coverage for *state* regulations, and most states have regulations covering the necessary aspects where regulation is needed.

Q: What if an accident occurs?

A: Negligence is still a crime. Damages can always be sought. There are still many other mechanisms to prevent a business from being negligent, including state regulations, insurance requirements, the ability of employees to alert the proper federal agency and initiate the regulatory process, and the natural tendency (especially in the Information Age) for a company to do everything reasonable to protect its reputation, including preventing accidents.

Q: Won't businesses simply ignore regulations until found in violation?

A: The Code of Federal Regulations is nearly 200,000 pages. As it is, most regulations are ignored because people simply don't know they exist. This is the core question our bill addresses: *can sanctions reasonably be imposed when businesses cannot reasonably be expected to know every aspect of the law?* As listed above, there are other forces to ensure businesses act in good faith to protect their employees, customers, and neighbors.

Q: Is there a scenario where it might be problematic for there to be this grace period?

A: We have elicited input from small business organizations, from fellow legislative offices, from lobbying organizations, and from think tanks. Not one group has presented a concrete example where this legislation would be harmful to the public health. If you have an example, please bring it to our attention immediately.